

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

| | | |
|-------------------------------|---|----------------------|
| HATTIE STEPHENS, | : | Case No. |
| | : | |
| Plaintiff, | : | (Judge) |
| | : | |
| v. | : | <u>COMPLAINT AND</u> |
| | : | <u>JURY DEMAND</u> |
| MIDLAND FUNDING, LLC, | : | |
| | : | |
| and | : | |
| | : | |
| JAVITCH, BLOCK & RATHBONE LLP | : | |
| | : | |
| and | : | |
| | : | |
| BRIAN C. BLOCK | : | |
| | : | |
| and | : | |
| | : | |
| JACOB M. FIGELMAN | : | |
| | : | |
| Defendants. | : | |

This is a claim for actual and statutory damages caused by Defendants' violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.*, and the Ohio Consumer Sales Practices Act ("OCSPA"), Ohio Rev. Code §§ 1345.01 *et seq.*, each of which prohibits debt collectors from seeking recovery on time-barred debts.

JURISDICTION AND VENUE

1. Jurisdiction of this Court over the federal claim is proper under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Jurisdiction over the Ohio claim is proper under 28 U.S.C. § 1367. Venue is proper in this district because the debtor resides here and the conduct complained of occurred here.

PARTIES

2. Plaintiff is a resident of Hamilton County, Ohio, is a consumer as defined at 15 U.S.C. § 1692a(3), and may have been obligated to pay a debt which, if incurred, was primarily for household, family and/or personal purposes. Plaintiff is also a consumer as defined by Ohio Rev. Code § 1345.01(D).

3. Defendant Midland Funding LLC ("Midland") is a debt buyer in that it purchases defaulted debt from original creditors and from other debt buyers. It is also a debt collector as defined in 15 U.S.C. § 1692a(6) in that it uses an instrumentality of interstate commerce and/or the mails in its business, the principal purpose of which is to collect debts; it also regularly collects or attempts to collect debts owed to another.

4. Defendant Javitch, Block & Rathbone LLP ("Javitch") is a law firm which is also a debt collector as defined in 15 U.S.C. § 1692a(6), in that it uses an instrumentality of interstate commerce and/or the mails in its business, the principal purpose of which is to collect debts; it also regularly collects or attempts to collect debts owed or due to another.

5. Defendants Block and Figelman are Javitch attorneys who signed the state-court pleading which is the subject of this lawsuit. They are also debt collectors as defined in 15 U.S.C. § 1692a(6) in that they use an instrumentality of interstate commerce and/or the mails in their business, the principal purpose of which is to collect debts, and that they regularly collect or attempt to collect debts owed or due to another.

6. Since all Defendants are debt collectors, all Defendants are also "suppliers" as defined by Ohio Rev. Code § 1345.01(C).

FACTUAL ALLEGATIONS

7. On or about July 29, 2008, Defendants filed a civil complaint against Plaintiff in the Hamilton County, Ohio, Municipal Court which alleged that Plaintiff owed Defendant Midland, as assignee of FCNB-Spiegel, over \$7,000. A true copy of that document is attached hereto as Exhibit A.

8. The Ohio lawsuit was based upon a contract for the sale of goods. Ohio law, following Section 2-725 of the Uniform Commercial Code, provides that any action for breach of such a contract must be commenced within four years after the cause of action accrues.

9. Defendants' alleged cause of action against Plaintiff accrued no later than February 3, 2003, more than four years before they filed the Hamilton County suit.

FIRST CAUSE OF ACTION – FDCPA

10. Plaintiff reasserts and realleges each and every allegation set forth above as if fully rewritten herein.

11. Without limiting the scope of Defendants' FDCPA liability, Defendants' conduct violated 15 U.S.C. §§ 1692e and e(10) in that it constituted a false, deceptive, and/or misleading representation or means in connection with the collection of a debt; 15 U.S.C. § 1692e(2)(A) in that it falsely represented the legal status of a debt; 15 U.S.C. § 1692e(5) in that it threatened to take an action that could not legally be taken; and 15 U.S.C. § 1692f in that it constituted an unfair or unconscionable means to collect a debt.

12. As a direct and proximate result of the above violations Plaintiff has sustained damages in an amount to be proved at trial, including her attorney fees in the Ohio lawsuit.

SECOND CAUSE OF ACTION – OSCPA

13. Plaintiff reasserts and realleges each and every allegation set forth above as if fully rewritten herein.

14. Defendants' conduct as described herein violated Ohio Rev. Code § 1345.02 in that it was an unfair or deceptive act or practice in connection with a consumer transaction.

15. Defendants' conduct also violated Ohio Rev. Code § 1345.03 in that it constituted an unconscionable act or practice in connection with a consumer transaction.

16. As a direct and proximate result of these violations Plaintiffs suffered damages in an amount to be proved at trial, including her attorney fees in the Ohio lawsuit.

PRAYER FOR RELIEF

Wherefore Plaintiff prays this Court to award:

- A. Compensatory damages including state-court attorney fees.
- B. Non-economic damages, including damage to credit, mental distress and humiliation, based upon Defendants' conduct in forcing Plaintiff to defend a lawsuit they knew to be meritless.
- C. Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A).
- D. A declaration that Defendants' conduct violated the OCSA.
- E. An injunction prohibiting Defendants from continuing to violate the OCSA.
- F. Actual damages, non-economic damages, treble damages and statutory damages for each violation of the OCSA.

G. A reasonable attorney fee and the costs incurred in the prosecution of this action.

H. Such further relief as this Court deems just and proper at law or in equity.

Respectfully submitted,

/s/ Stephen R. Felson

Stephen R. Felson (0038432)
215 E. Ninth St., Suite 650
Cincinnati, Ohio 45202
(513) 721-4900
(513) 639-7011 (fax)
SteveF8953@aol.com

Miriam H. Sheline (0018333)
Pro Seniors, Inc.
7162 Reading Road, Suite 1150
Cincinnati, Ohio 45237
(513) 345-4160
msheline@proseniors.org
Counsel for Plaintiff

JURY DEMAND

Plaintiff demands trial by jury as provided by the Federal Rules of Civil Procedure.

/s/ Stephen R. Felson

RCD F89723 JWS



D79475444

EXHIBIT

A

IN THE HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIOCERT. MAIL
O.M. WAIVER

Midland Funding LLC

8875 Aero Drive
San Diego, CA 92123-

Plaintiff

vs.

Hattie L. Robinson
AKA Hattie Stephens
1725 Dale Rd # 1.
Cincinnati, OH 45237-

Defendant(s)

CASE NUMBER:

08CV25077

JUDGE:

COMPLAINT FOR MONEY LOANED \$7,616.87

☒ IN ACCORDANCE WITH CIVIL RULE 4.6 (C) OR (D)
AND 4.6 (E) AN ORDINARY MAIL WAIVER IS REQUESTED

1. Plaintiff acquired, for a valuable consideration, all right, title and interest in the credit card debt set forth below originally owed by Defendant(s) to FCNB-SPIEGEL

As a result of the assignment, Plaintiff became, and now is, entitled to recover the amount loaned to Defendant(s) on credit card number xxxx-xxxx-xxxx-4652.

2. There is presently due the Plaintiff from the Defendant(s) for the money loaned on defendant's credit card, the sum of \$7,616.87.

3. The account records are not attached hereto because, upon information and belief: (a) Plaintiff is not the original creditor and does not have possession, custody or control of said records; (b) copies were sent monthly to the Defendant, and are or were in Defendant's possession, custody or control; (c) said account records may be voluminous.

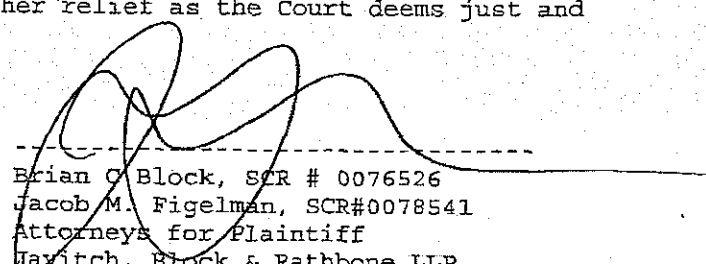
4. Plaintiff notified Defendant(s) of the assignment and demanded that Defendant(s) pay the balance due, but no part of the foregoing balance has been paid.

2008 JUL 29 A 10:28

GREGORY HARTMAN: CLERK
HAM. CTY. MUNI. CLERK
CIVIL DIVISION

5. Defendant(s) is/are in default on this repayment obligation.

WHEREFORE, Plaintiff prays for judgment against Defendant(s) in the amount of \$7,616.87 with statutory interest from the date of judgment, costs of this action, and such other and further relief as the Court deems just and proper under the circumstances.



Brian O. Block, SCR # 0076526
Jacob M. Figelman, SCR#0078541
Attorneys for Plaintiff
Javitch, Block & Rathbone LLP
1100 Superior Ave, 19Th Floor
Cleveland OH 44114-2518
(216) 687-1199
CLE@JBANDR.COM
FAX 216-623-0190

SUITNA01 r 07.03.08

2008 JUL 29 A 10:28

GREGORY HARTMANN, CLERK
HAM. CTY. MUNI. CLERK
CIVIL DIVISION